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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,707	11/30/2001	William H. Tew III	WHT-1	3674
27157	7590	12/12/2003	EXAMINER	
GREENWALD & BASCH, LLP 349 WEST COMMERCIAL STREET, SUITE 2490 EAST ROCHESTER, NY 14445			SPISICH, MARK	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/996,707	TEW, WILLIAM H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Spisich	1744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
     1. ☐ Certified copies of the priority documents have been received.  
     2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
     3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                              | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11302001</u> | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Peviani (USP 5,727,677). The patent to Peviani discloses a stationary member (eg, fig 17) for supporting an "item" (113) and a covering material (112) for at least one surface of the member and which includes a an antibacterial chemical therein (column 5, lines 16-23). No structure in claim 20 pertains to any "handling". The mere recitation of the article to be supported fails to define over the structure of Peviani.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al (USP 3,651,922) in view of Zabron et al (USP 5,906,269). The patent to Ross discloses a produce handling device including numerous food contacting surfaces (any one of the conveyor rollers 78 or the stationary surfaces 114 as in fig 5) wherein each of these surfaces has thereon a padding material (118 on the stationary surfaces

and 82 on the conveyor rollers). The patent to Ross discloses the invention substantially as claimed with the exception of the antimicrobial agent. The patent to Zabron teaches that it is well known to add an antimicrobial agent to a article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into to noted food contacting surfaces of Ross to inhibit bacterial growth. The foam padding material of Ross is preferably closed cell (column 3, lines 4-13) (claim 16) and includes a continuous yet flexible outer layer (89) (column 4, lines 55-60) (claim 17) of plastic or other suitable wear resistant material. The use of vinyl (claim 18) for this material would be any obvious choice of design. The manner of forming the foam padding material (claim 19) fails to define over the structure of Ross.

5. Claims 1 and 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (USP 2,195,371) in view of Ross et al (USP 3,651,922) and Zabron et al (USP 5,906,269). The patent to Moore discloses the general arrangement of a produce washer as encompassed by claim 1 which includes a receiver (15), a washer (see fig 1), and a water absorber (41). With regard to the "padding material", the patent to Ross teaches that it is well known in the food handle art to provide a padding material on the food contacting surfaces of the machine and it would be obvious to one of ordinary skill to have provided passing at any desired location on the machine so as to reduce the risk of bruising. It is also common in the food art to incorporate an antimicrobial agent into any number of food contacting surfaces, as is taught by Zabron. In fact, the prior art teaches the incorporation of such a material into articles ranging from coolers to

cutting boards to storage receptacles to brush bristles. It would have been obvious to one of ordinary skill in the art to have incorporated such an antimicrobial agent into any surface of the machine of Moore so as to inhibit bacterial growth. The dependent claims further include a "laundry list" of elements which may include the antimicrobial agent. The prior art clearly teaches that pretty much any surface which is intended to contact a food article may have such an agent incorporated therein. The various components recited in the dependent claims relate generally to conventional aspects produce washers and as such it is felt that an additional reference is necessary.

6. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Newhall et al (USP 2,534,205). The prior art discloses the invention substantially as claimed with the exception of the particular structure of the "water absorber", although it does disclose a dryer which operates on the same general principle. The patent to Newhall discloses a produce dryer including open cell foam rollers (14) as well as wringer rollers (18). It would have been obvious to one of ordinary skill to have substituted any known dryer known in the produce handling art.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Addeo discloses a food contacting element with an incorporated antibacterial agent, Keech to the dryer and the remaining patents to food handle device with a padding material.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS